

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF: )

R. J. C. )

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) OAH No. 10-0171-CSS  
) CSSD No. 001060835  
)  
)

**DECISION AND ORDER**

**I. Introduction**

The obligor, R. J. C., appealed a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in his case on February 25, 2010. The obligee children are E., 14 years old, and J., who is nearly 7 years old. The other parent is P. C. R.

The hearing was held on two occasions, May 4, 2010 and June 10, 2010. Ms. R. attended the first hearing only, by telephone; Mr. C. attended the second hearing only, in person. Erinn Brian, Child Support Specialist, represented CSSD at both sessions. The hearing was recorded and the record closed on July 7, 2010.

Based on the record and after due deliberation, the Notice of Denial of Modification Review is vacated and Mr. C.’s child support is modified to \$174 per month from October 2009 through December 2009; and further modified to \$379 per month from April 1, 2010, forward.

**II. Facts**

*A. Procedural Background*

Mr. C.’s child support for E. and J. was set at \$494 per month in September 2007.<sup>1</sup> He requested a modification review on September 11, 2009.<sup>2</sup> On September 24, 2009, CSSD notified the parties that a modification review had been requested.<sup>3</sup> On February 25, 2010, CSSD issued a Notice of Denial of Modification Review for the reason that Mr. C. did not provide all of the financial information necessary to review his case.<sup>4</sup> He filed an appeal and submitted income affidavits for 2008 and 2009 on March 29, 2010.<sup>5</sup>

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exh. 3.  
<sup>4</sup> Exh. 4.  
<sup>5</sup> Exh. 5.

*B. Formal Hearing Process*

The initial hearing was held on May 4, 2010 and Ms. R. attended by telephone. Mr. C. did not appear. Ms. R. presented testimony regarding her situation and what she knew of Mr. C.'s situation. Following the hearing, CSSD submitted a Post Hearing Brief with updated calculations for 2009 and 2010.<sup>6</sup> Mr. C. later filed a response to the post hearing brief and requested a supplemental hearing. His request was granted; the second hearing was held on June 10, 2010. Mr. C. appeared in person and presented testimony regarding his financial circumstances and the parties' current custody arrangement regarding E. and J. He also provided a copy of his most recent pay stub.<sup>7</sup>

Ms. R. did not appear at the second hearing. Telephone calls were placed to her three contact numbers, including the one at which she was reached for the first hearing. That number was no longer in service. A telephone message was left on Ms. R.'s answering machine to call the Office of Administrative Hearings (OAH), but she did not respond. After the second hearing, an order for additional financial information was issued on June 11, 2010. The order directed Ms. R. to submit her last three pay-stubs from each of her current places of employment, plus a statement indicating the date she started to work at each job. Her deadline was June 23, 2010. The order also directed CSSD to use the information both parties filed and prepare revised divided custody calculations for 2009 and 2010 based on their actual income in 2009 and estimates of their income for 2010.

Ms. R. submitted an email message to the OAH on June 16, 2010.<sup>8</sup> It states that she no longer works at A. A., and that over the past month she had worked 43.25 hours at the rate of \$9.50 per hour (presumably at UAA) but had not yet been paid.<sup>9</sup>

CSSD filed its Supplemental Post Hearing Brief on July 8, 2010. It states that on July 7, 2010, CSSD's representative made telephone contact with Ms. R., who indicated she no longer worked at A. A. as of June 4, 2010 and that she was working 10-15 hours per week at UAA. CSSD's representative said she asked Ms. R. to provide pay-stubs, but that the custodian refused, stating she was too busy and she had already provided employment information through an e-

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<sup>6</sup> Exhs. 7-8.

<sup>7</sup> Exh. 10.

<sup>8</sup> This 7-pg. document has been marked as Exh. A.

<sup>9</sup> Exh. A at pg. 1.

mail message sent to the OAH. CSSD submitted revised calculations,<sup>10</sup> which will be discussed below.

*B. Material Facts*

This is a divided custody case. Mr. C. and Ms. R. are the parents of E. and J. E. lives with Mr. C.; J. lives with Ms. R.

Mr. C. works in the computer industry. He formerly worked for both the S. A. and the University of Alaska at Anchorage (UAA) on a part-time basis. On April 7, 2010, he began full-time employment for the No Name, Inc., where he receives \$22.50 per hour as a networking specialist. He works 40 hours per week and on June 1, 2010, began receiving employment benefits such as health insurance.

In 2009, Mr. C. received wages, unemployment benefits and the permanent fund dividend, all of which total \$14,069.<sup>11</sup> If this were a primary custody case, Mr. C.'s child support would be \$303 per month for two children for 2009.<sup>12</sup>

As of April 2010, the obligor's income has increased significantly and stabilized. He received unemployment benefits during the first part of the year and began earning full-time income at No Name Inc. on April 7, 2010. His year-to-date income as of May 30, 2010, totaled \$6,152.<sup>13</sup> CSSD estimated the total income he would receive for the remainder of 2010 at \$27,300,<sup>14</sup> which CSSD added to his year to date income of \$6,152, for total estimated earnings in 2010 of \$33,452.<sup>15</sup> Adding to that the unemployment benefits and PFD he received results in total gross income for 2010 of \$37,333.<sup>16</sup> If this were a primary custody case, Mr. C.'s child support would be \$694 per month for two children, based on the estimate of his total 2010 income.<sup>17</sup>

Ms. R.'s current financial circumstances are somewhat more difficult to determine. She was essentially unemployed in 2009 due to being enrolled in college full-time. She did not file a

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<sup>10</sup> Exh. 10.

<sup>11</sup> Exh. 5 at pg. 3.

<sup>12</sup> Exh. 8 at pg. 5.

<sup>13</sup> Exh. 10.

<sup>14</sup> Supplemental Post-Hearing Brief at pg. 1 (\$22.50 per hour x 2080 hours/24 pay periods x 14 pay periods = \$27,300).

<sup>15</sup> See Exh. 10 at pg. 3.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

2009 tax return. Were this a primary custody case, Ms. R. would have a child support obligation of \$50 per month for 2009.

As to 2010, Ms. R. testified at the first hearing that for about one month prior she had been working for five hours per week paid at \$11 per hour for A. A. In addition, about two weeks prior to the hearing she started an intern program at UAA Di. S. S., where she was being paid \$9.50 per hour for 10-15 hours of work per week. Ms. R. could not be contacted for the second hearing, but the e-mail message she submitted to the OAH stated she no longer worked at A. A. as of May and that her last check would be under \$20. As a result her 2010 income should be estimated based on her work at UAA. CSSD used 10 hours of work per week, but that is too low because she said she averaged 10-15 hours per week. Since the custodian quit her job at A. A. soon after the first hearing, that income should be replaced for the purpose of calculating her portion of the parties' respective child support obligations. Thus, Ms. R.'s estimated annual income is \$8,715, which consists of \$7,410 in wages, and the PFD. If she were obligated to pay support in a primary custody situation, her child support would be \$182 per month for two children.<sup>18</sup>

### **III. Discussion**

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>19</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. A modification is effective the first day of the month following CSSD's notice to the parties that a modification has been requested.<sup>20</sup> As the person who filed the appeal in this case, Mr. C. has the burden of proving by a preponderance of the evidence that CSSD issued the Notice of Denial of Modification Review in error.<sup>21</sup>

Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources." CSSD initially denied Mr. C.'s request for modification for the reason that he did not adequately document his income. However, the

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<sup>18</sup> Attachment A.

<sup>19</sup> AS 25.27.190(e).

<sup>20</sup> 15 AAC 125.321(d). In this case, the notice was issued on September 24, 2009, thus making the modification effective on October 1, 2009. *See* Exh. 3.

<sup>21</sup> 15 AAC 05.030(h).

parties' respective income figures have been established and Mr. C.'s child support should be modified.

If the parents exercise divided custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than in a primary or shared custody situation. The child support award is calculated first by determining what each parent would owe the other in a primary custody situation, then by offsetting those amounts pursuant to the divided custody mathematical formula.<sup>22</sup> The second step, because divided custody is an "unusual circumstance," is to determine whether the amounts derived from the mathematical formula should be varied under Civil Rule 90.3(c)(1).<sup>23</sup>

CSSD determined that Mr. C.'s primary custody child support for 2009 would be \$303 per month for two children and Ms. R.'s would be \$50 per month for two children. Inserting these respective figures into a divided custody calculation results in a monthly child support payment of \$174, to be paid by Mr. C.<sup>24</sup>

Likewise, for 2010, CSSD determined that Mr. C.'s primary custody child support amount would be \$694 per month for two children and that Ms. R.'s would be \$135 per month for two children.<sup>25</sup> Ms. R.'s has been corrected as discussed in this decision to \$182 per month for two children.<sup>26</sup> Inserting these figures into a divided custody calculation results in a monthly child support payment of \$379, to be paid by Mr. C.<sup>27</sup>

In order for the child support amounts reached above to be varied, there must be a showing that "good cause" exists for the reduction. In order to establish good cause, it must be proven by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>28</sup> All the relevant evidence must be considered, including the circumstances of both parties and all of the children.<sup>29</sup>

Based on the totality of circumstances, this case does not present "good cause" for a variance from the amounts calculated from the parties' actual income figures. Both Mr. C. and

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22 Civil Rule 90.3(b)(2).

23 *Id.*

24 Exh. 9 at pg. 1.

25 Exh. 10 at pgs. 3 & 4.

26 Attachment A.

27 Attachment B.

28 Civil Rule 90.3(c).

29 Civil Rule 90.3, Commentary VI.E.1.

Ms. R. were marginally employed in 2009. Ms. R. is attending school and financing her education through a combination of loans, PELL grants and work study. Mr. C. has started working full-time in 2010, and his divided custody child support calculation provides adequate support for the parties' younger child, J., who lives with Ms. R. There is not clear and convincing evidence in this case that manifest injustice would result if Mr. C.'s child support obligation were varied from the amount calculated pursuant to Civil Rule 90.3.

#### **IV. Conclusion**

Mr. C. met his burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was incorrect. His child support should be modified to \$174 per month, beginning on October 1, 2009, and further modified to \$379 per month, effective April 1, 2010, forward. The record as a whole does not establish that there is good cause to depart from the child support guidelines for divided custody in Civil Rule 90.3.

#### **V. Child Support Order**

- Mr. C.'s child support is modified to \$174 per month, beginning on October 1, 2009, and further modified to \$379 per month, effective April 1, 2010, forward.
- All other provisions of the prior order in Mr. C.'s case, the Modified Administrative Child Support and Medical Support Order that CSSD issued on September 17, 2007, remain in full force and effect.

DATED this 27<sup>th</sup> day of September, 2010.

By: *Signed* \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

**Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 15<sup>th</sup> day of October, 2010.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to technical standards for publication.]